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UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

MICHAEL J. FLYNN, Plaintiff, v. LAFAYETTE RONALD HUBBARD a/k/a L. RON HUBBARD, Defendant, and MARY SUE HUBBARD, Intervenor-Defendant.	CIVIL ACTION NO. 83-2642-C MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MARY SUE HUBBARD'S APPLICATION FOR LEAVE TO INTERVENE

INTRODUCTION

Movant Mary Sue Hubbard seeks to intervene as a defendant in this action to protect her interests in the assets of the sole defendant L. Ron Hubbard, her husband of more than thirty years. She also seeks to protect her reputation which has been placed in issue by the complaint which names her as a primary agent of her defendant husband in the perpetration of the alleged tortious acts. As an intervenor, Mrs. Hubbard intends to defend against the allegations in the complaint in order to protect these interests. In addition, Mrs. Hubbard asserts counterclaims which require the litigation of issues common to the underlying complaint, and judicial economy is best served by their determination in a single proceeding.

Mrs. Hubbard has accompanied her Application with an extensive, detailed declaration which sets forth the factual circumstances surrounding her request. The factual basis in support of Mrs. Hubbard's intervention can be summarized as follows: (1) her husband is and has been in seclusion and, it is her belief, will not appear and defend this action; (2) Plaintiff Michael Flynn is fully aware of this fact and, she believes, has filed this action, naming only her husband as a defendant, with the express design of obtaining a default judgment against him and in the belief that Flynn will never be required to prove the allegations in his complaint; (3) she is dependent on her husband for her financial support and is a primary legatee in his will, and therefore has a great financial stake in the outcome of this case, which seeks $141 million dollars in damages; (4) she held the position within the Church of Scientology structure throughout much of the time peroid alleged in the complaint that would have had supervisory responsibility for the activities alleged by Flynn, and therefore is a material party, who would have directed any of the activities alleged if they had in fact occurred; (5) because she has been named in the complaint as having participated in the tortious acts and because the complaint has been circulated to the press by Plaintiff, her reputation and good name are directly impugned by the allegations in the complaint; and (6) she has a counterclaim against Mr. Flynn (discussed infra) which raises the same issues of fact as does Mr. Flynn's complaint. Declaration of Mary Sue Hubbard, ¶2.

In this memorandum, movant first sets forth in a

statement of relevant facts outlining both Mrs. Hubbard's interests in intervention and Mr. Flynn's improper motivations in prosecuting this lawsuit. Movant then shows at Section "I" of her Argument that the interests she seeks to protect entitle her to intervention as a matter of right. Nonetheless, movant also shows at Section "II" of her Argument that, in the alternative, permissive intervention is appropriate because she intends to defend against the allegations of the complaint, thereby litigating common questions of fact and law. It is shown that there can be no undue prejudice or delay caused by permitting her to intervene at this early date to defend against Plaintiff's allegations. It is also pointed out that intervention would make possible the judicial economies which would result from the concurrent litigation of the common questions raised by the movant's counterclaims and by her defense to the underlying complaint.

STATEMENT OF FACTS

A. Mary Sue Hubbard Has A Substantial Interest In The Outcome Of This Action And Is A Central Figure In Its Allegations

Mary Sue and L. Ron Hubbard, who is presently the sole defendant in this action, have been married for over thirty years. Declaration of Mary Sue Hubbard, ¶1. Mrs. Hubbard is solely dependent on her husband for her support, and she is well provided for by him. She has no job skills which would allow her to earn an income comparable to

that provided her by her husband. Furthermore, she is a primary legatee to her husband's substantial estate. Declaration of Mary Sue Hubbard, ¶'s 5-6. Hence, she has an obvious and readily identifiable interest in the ouctome of this case, which is seeking $141 million in damages from Mr. Hubbard and which therefore severely threatens her present and future financial security.

Mrs. Hubbard also explains that she considers it unlikely that her husband will appear and defend the suit -- whose material allegations she is prepared to disprove -- because he is and has been in seclusion for several years. Declaration of Mary Sue Hubbard, ¶'s 12-13. Indeed, Mr. Flynn is fully aware of this fact and believes that Mr. Hubbard will not appear in this case, he has so implied in a document he filed in this cae, where he states that "it is speculaton at this point that Mr. Hubbard will even appear," and makes reference to the possibility of Mr. Hubbard defaulting. Declaration of Mary Sue Hubbard, ¶14(C). This statement of Mr. Flynn's is no surprise since he is involved in numerous suits in which Mr. Hubbard is named as a defendant and has not appeared, and since Mr. Flynn unsuccessfully represented Mr. Hubbard's estranged son in an effort, instigated by Mr. Flynn, to attach Mr. Hubbard's whole estate on the ground that Mr. Hubbard was a "missing person." See Declaration of Mary Sue Hubbard, ¶14(A) and (B), and Mary Sue Hubbard's counterclaim, ¶'s 11-28.

Not only does Mrs. Hubbard have a paramount interest in the outcome of this proceeding, particularly in light of the

unlikelihood of her husband's appearance, but she herself is a central figure in the complaint's allegations. The complaint alleges that she was an agent of her husband in carrying out the claimed conspiracy against Mr. Flynn, which includes allegations of attempted murder, theft, and other illegal and unconscionable acts designed to destroy him. In reality, since the conspiracy is alleged to have occurred through the Guardian's Office of the Church of Scientology, and since Mrs. Hubbard (not Mr. Hubbard) had the responsibility of general supervison of the Guardian's Office for much of the period alleged in the complaint, Mrs. Hubbard is a key figure in the issues raised in the complaint. Declaration of Mary Sue Hubbard, ¶'s 15-21 and 25. In his other complaints against Mr. Hubbard, in most of which Mrs. Hubbard is also named as a defendant, Mr. Flynn gave Mrs. Hubbard a much more prominent role than he has in the instant complaint, perhaps because here he is attempting to sue only Mr. Hubbard and obtain a rapid default. See counterclaim of Mary Sue Hubbard. Hence, Mrs. Hubbard's reputation is clearly impugned in the complaint, and would be further damaged if the complaint could not be litigated on the merits.

B. Mr. Flynn's Effort To Obtain A Default Without Having To Prove His Case Is The Latest In A Long Series Of Litigation Tactics Which Should Not Be Contenanced And Which Are The Subject Of A Counterclaim That Should Be Heard In The Context Of This Suit

This lawsuit is the latest in a long series of lawsuits brought by Mr. Flynn on behalf of numerous clients against various Churches of Scientology, Mr. Hubbard, and Mrs. Hubbard. The complaint essentially alleges that the methods of defense against this flood of lawsuits were improper, tortious, even criminal. Mrs. Hubbard, on the other hand, contends that it is not she or her husband or the Scientology Churches which have used improper and tortious methods in the course of these lawsuits, but that it is Mr. Flynn who has done so and that this complaint is the latest in a series of tortious acts engaged in by Mr. Flynn in an effort to achieve a financial recovery from his mammoth investment in this litigation.

Hence, Mrs. Hubbard has filed a counterclaim in this action, which counterclaim raises the identical issues as Mr. Flynn's complaint, except from the other side, i.e., it raises the issue of tortious conduct in the course of Mr. Flynn's "Scientology litigation", except by Mr. Flynn, not by Mr. or Mrs. Hubbard.

The counterclaim alleges that Mr. Flynn became embroiled in litigation against the Church, and Mr. and Mrs. Hubbard to the point that it was the focus of his practice; that he had planned and hoped for a quick and large

financial return, which he was unable to obtain; that he found himself bogged down in the litigation with questionable prospects of a quick recovery or even any recovery; that he realized that, while the Church and Mrs. Hubbard appeared and defended these suits, her husband was unavailable and did not; that Mr. Flynn, in an effort to gain the most rapid financial recovery, attempted to obtain default judgments aginst Mr. Hubbard, but discovered that he was unable to do so in suits in which the Church and Mrs. Hubbard were named and appeared; that he determined to find a vehicle which would permit him to identify and if possible secure Mr. Hubbard's assets, and/or identify his whereabouts, for purposes of Mr. Flynn's other litigation and for purposes of having assets available to him to collect on a default judgment; that Mr. Flynn devised a plan to identify those assets and/or Mr. Hubbard's whereabouts, and then sue Mr. Hubbard only so that he could obtain a quick default judgment against him; that, as part of his plan, he counseled Mr. Hubbard's estranged eldest son, Ronald DeWolf, to file a probate suit to declare Mr. Hubbard a missing person whose estate was in need of court supervision; that such a suit was in fact filed, and Mrs. Hubbard was forced to appear and defend it; that she was granted summary judgment in that suit; that that suit was filed without probable cause and for improper collateral purposes of trying to force a financial settlement in Mr. Flynn's cases and of identifying Mr. Hubbard's assets and/or whereabouts for use in other cases, including the underlying complaint; that Mr. Flynn had a conflict of interests in acting as DeWolf's

counsel but did so nonetheless; that Mr. Flynn did in fact use the information he obtained from the probate suit in other suits, and even was held in contempt of court for violating a court order for doing so; that these acts, and other related ones, constituted malicious prosecution and abuse of process in the conduct of the probate suit; that, having improperly discovered information about Mr. Hubbard's financial affairs through the probate suit, Mr. Flynn then filed the underlying complaint herein, naming as a defendant only Mr. Hubbard with the objective and in the expectation that he would not appear to defend and that Mr. Flynn would thereby obtain a rapid default judgment, and then collect on Mr. Hubbard's assets; that Mr. Flynn published the contents of the underlying complaint to the press on two or more occasions, thereby defaming Mrs. Hubbard; that Mr. Flynn did not have a reasonable or good faith belief in the allegations in the underlying complaint, or in Mr. Hubbard's relationship to them; that Mr. Flynn abused process in his dissemination of the complaint to the press; and that the filing of the underlying complaint constitutes an abuse of judicial process.

In summary, what is going on in this case is that Mr. Flynn, having failed to obtain any recovery from his years of litigation against the Hubbards and various Churches of Scientology, has embarked on the road of making sweeping and unfounded allegations in this complaint and sued only Mr. Hubbard with the sole objective of obtaining a default judgment against him, thus avoiding a trial on the merits. This is the latest in a series of improper and tortious acts of

Mr. Flynn designed to obtain a recovery from this litigation. After having named Mrs. Hubbard in countless lawsuits for her and her husband's alleged wrongful conduct in "controlling and directing" the Church of Scientology, he has now intentionally excluded her as a defendant in a clear attempt to prevent her defending her interests, thereby permitting his rush to default. We now turn to a discussion of the legal standards applicable to intervention and show that Mrs. Hubbard is entitled to appear and defend in this action.

ARGUMENT

I

INTERVENTION OF RIGHT

Intervention as a matter of right is governed by Rule 24(a) which reads as follows:

> "(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Intervention under Rule 24(a)(2) requires the movant to make three showings: (1) that the movant has "an interest relating to the property or transaction which is the subject of the action"; (2) that the lawsuit "may as a practical matter

impair or impede his ability to protect that interest;" and (3) that the movant's interest is not adequately represented by an existing party. The remainder of this section will show that Mrs. Hubbard meets this standard for establishing intervention as a matter of right.

A. Mrs. Hubbard Has Two Interests Which Support Intervention

There is no clear formulation of the kind of interest required to meet the first prong of Rule 24(b)(2). The United States Supreme Court has stated that, to meet this prong, a movant must show a "significantly protectable interest." Donaldson v. United States, 400 U.S. 517, 531, 91 S.Ct. 534, 27 L.Ed.2d 580 (1971). Similarly, the requisite interest has been defined as a "direct, substantial, legally protectable interest in the proceedings." Diaz v. Southern Drilling Corp., 427 F.2d 1118, 1124 (5th Cir. 1970) quoting Hobson v. Hansen, 44 F.R.D. 18, 24 (D.D.C. 1968) (Skelly Wright, J.). However, the District of Columbia sitting en banc in the appeal of the Hobson v. Hansen case recognized in Smuck v. Hobson, 408 F.2d 175, 179 (D.C. Cir. 1969) that the "interest" requirement has not and cannot be well defined when it ruled as follows:

> "The effort to extract substance from the conclusory phrase 'interest' or 'legally protectable interest' is of limited promise. Parents unquestionably have a sufficient 'interest' in the education of their children to justify the initiation of a lawsuit in appropriate circumstances, as indeed was the case for the plaintiff-appellee parents here. But in the context of intervention the question is not

whether a lawsuit should be begun, but whether already initiated litigation should be extended to include additional parties. The 1966 amendments to Rule 24(a) have facilitated this, the true inquiry, by eliminating the temptation or need for tangential expeditions in search of 'property' or someone 'bound by a judgment.' It would be unfortunate to allow the inquiry to be led once again astray by a myopic fixation upon 'interest.' Rather, as Judge Levantahal recently concluded for this Court, '[A] more instructive approach is to let our construction be guided by the policies behind the 'interest' requirement. * * * [T]he 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process."

* * *

"This does not imply that the need for an 'interest' in the controversy should or can be read out of the rule. But the requirement should be viewed as a prerequisite rather than relied upon as a determinative criterion for intervention." (Footnotes omitted.)

The Supreme Court's first opportunity to interpret the "interest" requirement of Rule 24(a)(2) after the 1966 amendment to Rule 24 came in the case Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, 87 S.Ct. 932, 17 L.Ed. 2d 814 (1967). The Supreme Court quoted extensively from the Advisory Committee's comments at footnote three including the following passage:

"If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene, and his right to do so should not depend on whether there is a fund to be distributed or otherwise disposed of. Intervention of right is here seen to be a kind of counterpart to Rule 19(a)(2)(i) on joinder of persons needed for a just adjudication: where, upon motion of a party in an action, an absentee should be joined so that he may protect his

interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion." (Emphasis in original.) 386 U.S. at 134.

The Supreme Court then applied this standard to Cascade Natural Gas Corp. ("Cascade"). Cascade's interest was based on the outcome of a court ordered divestiture of Pacific Northwest Pipeline Corporation ("Northwest") by El Paso Natural Gas Company which resulted from a violation of Section 7 of the Clayton Act. Cascade was a distributor of natural gas in Oregon and Washington and Northwest was its sole supplier of natural gas. Cascade was found to have an interest in the divesture plan - the relief resulting from the lawsuit - because it would be dependent on the newly created company for its supplies. The Supreme Court held that Cascade's interest in the outcome of the lawsuit was a sufficient interest to permit intervention as a matter of right.

Mrs. Hubbard has two interests that similarly satisfy Rule 24(a)(2). First, she has an economic interest in the outcome of the lawsuit. This economic interest stems from the fact that she has a direct interest in Mr. Hubbard's assets which are threatened by Plaintiff Flynn's request for damages in the amount of $141 million dollars. Second, the Complaint specifically alleges that Mrs. Hubbard acted as Mr. Hubbard's agent in perpetrating the alleged tortious acts hence she has an interest in defending her reputation by showing the allegations to be false. This is particularly so since Mrs. Hubbard's position within the Church of Scientology for

much of the period alleged in the complaint makes her a central figure in Flynn's allegations. See Declaration of Mary Sue Hubbard, ¶'s 15-25.

1. Mrs. Hubbard Has An Economic Interest In The Outcome Of This Lawsuit

Mrs. Hubbard, as defendant L. Ron Hubbard's wife for over thirty years, has not only a strong emotional commitment to the well-being and good name of her husband, but also a direct and personal interest in his economic affairs. She is almost wholly dependent on her husband for her financial support and maintenance. Declaration of Mary Sue Hubbard, ¶5. Further, she is a primary personal legatee of her husband's will, and consequently has a direct interest in a significant portion of her husband's estate. Declaration of Mary Sue Hubbard, ¶6. A depletion or diminution of her husband's assets and estate would have a direct and profound impact on Mrs. Hubbard -- immediately, by reducing, if not destroying, her husband's ability to support her, and ultimately, by depriving her of her inheritance. Hence, the outcome of this lawsuit will affect the funds which are the source of her current and her future livelihood.

Mrs. Hubbard's interest in maintaining the assets which provide for her support and which, upon her spouse's death, will vest in her is identical to the interest justifying intervention as of right in the recent case S.E.C. v. Flight Transportation Corp., 699 F.2d 943 (8th Cir. 1983).

This case was an enforcement proceeding by the SEC

which named as a defendant William Rubin, the President, Chairman of the Board of Directors and chief executive officer of Flight Transportation Corp. ("FTC"). The SEC sought to freeze Rubin's assets and to obtain both an accounting of all funds received by him from FTC and a disgorgement of these funds.

Rubin's wife sought to intervene in the action. She had initiated a divorce proceeding which sought a division of the marital property and the marital property included the disputed funds received by Rubin from FTC. The District Court denied intervention but was reversed on appeal. The Court of Appeals found it "irrelevant" that under state law the wife had no "vested" interest in the marital property and held that she had a "significantly protectable interest" in the litigation. 699 F.2d at 949. Thus, she was permitted to intervene and to participate in the litigation of the merits of SEC's claims in order to protect her interest in assets that might be depleted or diminished by an adverse judgment.

Mrs. Hubbard similarly has an interest to defend against a ruling adverse to her husband which would have a serious impact on his personal assets. Mrs. Hubbard's interest in these assets is just as substantial and protectable as those of Mrs. Rubin. Indeed, her interest in Mr. Hubbard's estate is identical to Mrs. Rubin's interest in a distribution of marital property; both interests are in funds that will be distributed upon one of the two events (divorce or death) which cause a distribution of assets from a marriage.

The case Johnson v. Lee, 460 F.2d 1053 (5th Cir.

1972) also involved an intervenor that had an economic interest in whether or not the plaintiff was entitled to damages from the defendant. In Johnson, a workers compensation insurance carrier was permitted to intervene in a tort action brought by the workers compensation claimant against the tortfeasor. The insurance carrier had no interest in the tort action itself. Its only interest was in the monetary recovery, if any, obtained by the plaintiff. The carrier's right to reimbursement and subrogation were considered a sufficient interest to permit intervention. Here, Mrs. Hubbard similarly has an interest in the monetary recovery by the plaintiff in a tort action. Her interest in avoiding recovery by the plaintiff is the reverse size of the coin of the insurance carrier's interest in establishing tort liability in order to obtain its share of the recovery.

Mrs. Hubbard's interest in receiving continued support payments from her husband is also highly analogous to the intervenor's interest in Decker v. United States Department of Labor, 473 F.Supp. 770 (E.D. Wis. 1979). The Court in Decker permitted the Archdiocese of Milwaukee to intervene as a defendant in a lawsuit which challenged the constitutionality of providing CETA grants or contracts to parochial institutions. The Court held that the Archdiocese had "a direct interest in continued receipt of CETA funds, which interest is threatened by this litigation." 473 F.Supp. at 773. The Archdiocese was permitted to intervene of right in the litigation of the merits of the case in order to protect, as Mrs. Hubbard seeks to do here, its continued receipt of

funds.

Other circuit courts have recognized an intervention movant's interests solely in the outcome of the lawsuit as being sufficient under Rule 24(a)(2). One leading case is New York Public Interest Research Group, Inc. v. Regents of the University of the State of New York, 516 F.2d 350, 351-52 (2nd Cir. 1975) in which the Pharmaceutical Society of the State of New York and three individual pharmacists sought to intervene in a consumer lawsuit seeking to enjoin the enforcement of regulations promulgated by the Regents which prohibited the advertising of the price of prescription drugs. The court recognized that the pharmacists had an economic interest in the outcome of the lawsuit, i.e., whether the regulations would be upheld. Mrs. Hubbard similarly has a direct economic interest in whether the alleged tortious acts are found to have occurred and to have damaged Flynn.

Similarly, in Natural Resources Defense Council v. United States Nuclear Regulatory Comm., 578 F.2d 1341 (10th Cir. 1978), two mining companies were permitted to intervene in an action brought to prohibit the issuance of a license for operation of an uranium mill to third mining company. The court held that the intervenor companies had an interest in the outcome of the lawsuit because it would affect their ability to secure licenses in the future. In so holding, the court remarked that "[s]trictly to require that the movant in intervention have a direct interest in the outcome of the lawsuit strikes as being too narrow a construction of Rule 24(a)(2)," (emphasis in original) 528 F.2d at 1344.

See also CRI, Inc. v. Watson, 608 F.2d 1137, 1140 (8th Cir. 1979) (applicant for intervention had no interest in the contract being litigated but was permitted to intervene because his recovery of a finder's fee was affected by the outcome of the lawsuit since it was contingent upon a finding that the contract had been performed by CRI); Finch v. Mississippi State Medical Assn, Inc., 585 F.2d 765, 779-80 (5th Cir. 1978) (held that plaintiffs challenging statutory method for selecting members of Mississippi State Board of Health were doctors and hence only had standing to sue the Medical Association but in dicta stated that the other associations that similarly had statutory power to nominate candidates for appointment to the Board have "an interest in the outcome of this action" and hence, if so inclined, should be granted leave to intervene as defendants); and Joseph Skillen & Co. v. City of Toledo, 528 F.2d 867 (6th Cir. 1975) (neighboring land owners found to have a direct and substantial interest in a lawsuit seeking to rezone a piece of property to permit the construction of low-income housing units).

2. Mrs. Hubbard Has An Interest to Protect Her Reputation Which Is Placed In Question By The Allegation In The Complaint

Mary Sue Hubbard's own reputation has been called into question by the complaint in this action.

Though Mr. Hubbard is the sole defendant named in this lawsuit, the complaint names and implicates Mrs. Hubbard as a key individual who knowingly participated in the alleged

conspiracy to "destroy" the Plaintiff. The complaint names and implicates Mrs. Hubbard as one of the central agents who implemented the conspiracy. It also alleges that the conspiracy was carried out by the Guardian's Office of the Church of Scientology during a time when Mrs. Hubbard supervised and was responsible for the activities of this office. Declaration of Mary Sue Hubbard, ¶'s 15-25.

Mrs. Hubbard's reputation is grievously maligned by the complaint because the acts attributed to her and the Guardian's Office are of a particularly odious and criminal nature. Mr. Flynn alleges that she conspired to murder him, to steal documents from his offices, to frame him on criminal charges, to poison him, to kidnap his clients, to file false charges with the Massachusetts State Bar, to conduct illegal electronic surveillance upon him, to make obscene phone calls to his neighbors, to send him a bomb threat and to defame him. Complaint, ¶'s 13 and 37.

Mrs. Hubbard's interest in protecting her reputation has been made even more paramount by the fact that the Plaintiff Flynn has taken it upon himself to publish the complaint by distributing copies to the news media. Declaration of Mary Sue Hubbard, ¶27. Since the complaint names Mrs. Hubbard as an active participant in tortious activities, Plaintiff's publication of the complaint has directly placed Mrs. Hubbard's reputation in question.

Finally, as Plaintiff Flynn is well aware, Mrs. Hubbard's husband is unlikely to appear in this action to defend against the allegations. Mr. Hubbard has been in

complete seclusion since March of 1980. He has been named as a defendant in over a dozen lawsuits in which the Plaintiff serves as an attorney or is in some type of cooperative association with other attorneys. Mr. Hubbard also was the subject of an unsuccessful attempt to be declared a missing person whose estate was in need of court supervision by his son by a former marriage who was represented by Plaintiff Flynn. Mr. Hubbard has not appeared in any of these actions. Declaration of Mary Sue Hubbard, ¶'s 9-14.

If Mr. Hubbard fails to appear, Plaintiff will undoubtedly seek a default without ever being required to establish the truth of these published allegations. Such a default would further harm Mrs. Hubbard's reputation because the default and the execution of a substantial judgment will appear to confirm the allegations that Mrs. Hubbard was engaged in tortious activities.

Mrs. Hubbard's interest in protecting her reputation by defending against the allegations in the complaint is sufficient to invoke Rule 24(a)(2). The Supreme Court has held that injury to reputation is a protectable interest and can serve as the basis for standing to sue. Joint Anti-Facist Refugee Committee v. McGrath, 341 U.S. 123, 71 S.Ct. 624, 95 L.Ed 817 (1951); Jenkins v. McKeithen, 395 U.S. 411, 422, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969). See also Southern Mutual Help Assn, Inc. v. Califano, 574 F.2d 518, 524 (D.C. Cir. 1977); and United States v. Briggs, 514 F.2d 794, 797-99 (5th Cir. 1975). It also has been recognized that movants that meet the Article III requirment of demonstrating a stake in the

outcome of the lawsuit "necessarily possess the interest required to support intervention under Fed.R.Civ.P. 24." Legal Aid Society of Alameda County v. Brennan, 608 F.2d 1319, 1328 n. 9 (9th Cir. 1979).

The Jenkins v. McKeithen case is highly instructive. The plaintiff sought to enjoin an investigation of his conduct by a state commission which had been created to inquire into criminal conduct in labor-management relations. The plaintiff claimed that the commission in essence was conducting public trials designed to find persons like him guilty of violating criminal laws, yet he had been denied the procedureal safeguards normally accorded criminal trials. The court held that the plaintiff had standing to challenge the commission's procedures stating:

> "[It] is alleged that the very purpose of the Commission is to find persons guilty of violating criminal laws without trial or procedural safeguards, and to publicize those findings. Moreover, we think that the personal and economic consequences alleged to flow from such actions are sufficient to meet the requirement that appellant prove a legally redressable injury ...." 395 U.S. at 422.

In Jenkins v. McKeithen, the state commission was making criminal charges in a proceeding in which the person being charged could not appear to defend against the charges. Here, the complaint filed by Plaintiff Flynn charges Mrs. Hubbard with not only tortious but criminal conduct and Plaintiff presumably intends to place her conduct on trial. However, absent intervention, Mrs. Hubbard, like Mr. Jenkins, will have these criminal charges litigated without being

afforded an opportunity to protect her reputation by rebutting the charges. Like Mr. Jenkins, Mrs. Hubbard has a sufficient interest in protecting her reputation to permit her to be heard.

Also, the Fifth Circuit in United States v. Briggs, 514 F.2d 794, 797-99 (5th Cir. 1975) held that the mere naming of individuals in a complaint can damage their reputations and provide a sufficient interest for the individuals to bring an action seeking to have their names expunged. The petitioners in Briggs were unindicted co-conspirators named in a federal indictment. The court went on to hold that expungement was proper because their interest in their reputations outweighed any governmental interest in identifying the co-conspirators by name in the indictment. 514 F.2d at 806.

Mrs. Hubbard's interest in her reputation is one that is "protectable." If permitted to intervene, her interest can be protected because she will be in a position to defend against the damaging allegations and to minimize the damage from Mr. Flynn's publication of the allegations by prevailing on the merits.

B. The Disposition Of This Action Will, As A Practical Matter, Impair Mrs. Hubbard's Interests

Rule 24(a)(2) also requires a showing that there is a possibility that the disposition of the lawsuit may impair or impede, as a practical matter, the applicant's ability to protect his or her interest. This requirement was interpreted

by the Tenth Circuit in Natural Resources Defense Council v. United States Nuclear Regulatory Comm., 578 F.2d 1341, 1345 (10th Cir. 1978) as follows:

> "It should be pointed out that the Rule refers to impairment 'as a practical matter.' Thus, the court is not limited to consequences of a strictly legal nature. The Court may consider any significant legal effect in the applicant's interest ...."

A judgment in favor of the Plaintiff in this action would have serious legal effects on Mrs. Hubbard's interests. With respect to her interest in her husband's assets, a judgment would permit Plaintiff Flynn to obtain a writ of execution which could be used to execute on these assets. Mrs. Hubbard would have no legal recourse to resist the writ of execution. Hence, the judgment would have a binding legal effect on her interest in the assets being subjected to execution.

Also, a judgment would cause Mrs. Hubbard's reputation to be irreparably harmed because even a default judgment against Mr. Hubbard can be interpreted by the public as sustaining the allegations in the complaint which charge Mrs. Hubbard with wrongdoing. Absent intervention, Mrs. Hubbard will be deprived of the opportunity to defend against these allegations and thereby avoid additional damage to her reputation.

C. It Is Highly Unlikely That Mrs. Hubbard's Interests Will Be Represented Absent Intervention

The final requirement under Rule 24(a)(2) is a showing that the representation of the applicant's interest by the parties may be inadequate. In Trobovich v. United Mine Workers, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972), the Supreme Court held that this requirement is satisfied "if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal."

This requirement clearly is met where there is no party in the lawsuit who will protect the movant's interests. See Stallworth v. Monsanto Co., 558 F.2d 257, 268 (5th Cir. 1977) (white employees sought to intervene in an employment discrimination lawsuit to defend their interests in the defendant's seniority system; the court held that since neither party has voiced the movants' concerns or expressed a desire to do so, their interests are not adequately represented); Liddell v. Caldwell, 546 F.2d 768, 771-74 (8th Cir. 1976), cert. denied, 433 U.S. 914 (1977) (held representation to be inadequate where movant sought to object to and appeal consent decree entered into by existing parties); and Decker v. United States Department of Labor, 473 F.Supp. 770, 773 (E.D. Wis. 1979).

It is highly likely that the sole defendant in this action will not appear to defend against the allegations. Mr. Hubbard has been in seclusion of more than three years and

over this time consistently has failed to make an appearance in a multitude of lawsuits in which he has been named as a defendant. Declaration of Mary Sue Hubbard, ¶'s 9-15. Indeed, Plaintiff Flynn admits this likelihood in a document recently filed in this action entitled Motion to Strike Letter Dated September 14, 1982. Plaintiff Flynn recites his own knowledge of Mr. Hubbard's failure to appear in other cases and concludes that it "is speculation at this point that Mr. Hubbard will even appear in this lawsuit." These facts are sufficient to establish that representation of Mrs. Hubbard's interest "may be" inadequate.

II

PERMISSIVE INTERVENTION

In the alternative, Mrs. Hubbard should be granted permissive intervention. The factors governing permissive intervention are stated in Rule 24(b) as follows:

> "(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a condition right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agencey or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the

rights of the original parties."

The threshold requirement for permissive intervention is that the applicant have a claim or defense which involves a question of law or fact which also must be resolved in the main action. Wade v. Goldschmidt, 673 F.2d 182 (7th Cir. 1982). The existence of a common question permits the Court to exercise its discretion which is based on its assessment of whether intervention will unduly delay or unduly prejudice the adjudication of the rights of the original parties.

Here, Mrs. Hubbard seeks permissive intervention in order to assert a defense to the allegations in the complaint. Since she seeks to intervene to defend against specific allegations in the complaint, there can be no question that common questions of fact and law will be involved.

The identical situation was presented in the case Holcomb v. Aetna Life Insurance Co., 255 F.2d 577 (10th Cir. 1958). The lawsuit was action in interpleader brought by Aetna. Two sets of parties were seeking funds from Aetna: the beneficiaries of an annuity contract entered into by a deceased person and the heirs of the deceased who sought a return of the premiums paid on the contract alleging that the deceased had been fraudulently induced by Aetna and others to enter into the annuity contract. Permissive intervention was granted to the persons named by the heirs as participating with Aetna in the fraud and conversion of the deceased funds. The court held that intervention was proper because "the question of whether or not there had been a conversion of Mrs. Rettenmeyer's bonds

by them was governed by the same facts and law determining Aetna's liability." 255 F.2d at 582. Hence, they were allowed to intervene in order to defend against the allegations of their wrongdoing.

There are other cases where permissive intervention has been permitted to enable intervenors to assert defenses to allegations in the complaint even though they have not been named as defendants. In Stewart-Warner Corp v. Westinghouse Elec. Corp., 325 F.2d 822, 825 (2nd Cir. 1963), cert. denied, 376 U.S. 944 (1964), a subsidiary of the defendant was permitted to intervene in a patent infringement case brought against the parent corporation even though its proposed answer was "substantially the same as Westinghouse's answer." Similarly, in Pace v. First Nat. Bank of Osawatomie, Kansas, 277 F.Supp. 19 (D. Kan. 1965), intervention was permitted when the applicant sought to intervene as a defendant and to assert the same defense which already had been advanced by the defendant bank.

Since the threshold requirement of common questions is met, the only remaining question is whether intervention will result in undue delay or undue prejudice. It is recognized that the addition of a party will always result in some delay. Philadelphia Elec. Co. v. Westinghouse Elec. Corp., 308 F.2d 856, 860 (3rd Cir. 1962), cert. denied, 372 U.S. 936 (1963). However, in determing whether the delay is undue, it must be balanced against the judicial economy of disposing of all related defenses in one lawsuit. International Tank Terminals, Inc. v. M/V Acadia Forest, 579

F.2d 964 (5th Cir. 1978); Pace v. First Nat. Bank of Osawatpomie, Kansas, 277 F.Supp. at 20.

Here, there can be no legitimate claim of delay or prejudice caused by Mrs. Hubbard's intervention to oppose the Plaintiff's allegations. Mrs. Hubbard is seeking intervention at the very initiation of this lawsuit. By defending against the allegations of wrongdoing in the complaint, she would be doing no more than the Plaintiff should expect upon the filing of his lawsuit.

Furthermore, the existence of counterclaims against Plaintiff Flynn is a factor which argues in favor of permissive intervention.[1/] Absent intervention, these claims will be filed in federal court in a separate action with Michael Flynn named as the sole defendant. Judicial economy would be advanced by the litigation of these claims in conjunction with the existing complaint because there are substantial common questions of law and fact that must be resolved. In fact, the underlying complaint and the counterclaim are mirror images in that the thrust of each is alleged tortious conduct by the other side in the course of Mr. Flynn's "Scientology litigation."

[1/] However, should the Court determine that the counterclaims would cause undue delay, it is submitted that intervention could then be limited to Mrs. Hubbard's interest in asserting a defense to the underlying complaint. See Wright & Miller, Federal Practice and Procedure: Civil §1921, p. 618.

For example, a central factual defense to Mr. Flynn's lawsuit will be not only that the allegations in the complaint are false but also that Mr. Flynn's factual averments and characterizations are not worthy of any credibility because the whole underlying complaint is a sham and a litigation tactic to obtain a default judgment against Mr. Hubbard, and that the underlying complaint is simply the latest phase of a whole coordinated plan designed to extract a rapid financial recovery Mr. Flynn's "Scientology litigation." Highly relevant to this defense is the fact that Plaintiff Flynn quite recently instituted and lost a similar sham proceeding in the California courts which sought to have L. Ron Hubbard's estate administered by his estranged son by a prior marriage, based on the trumped up charge that Mr. Hubbard was a missing person. In filing both the California action and the instant lawsuit, Mr. Flynn relied on the likelihood that Mr. Hubbard would not come forward to protect his interests. This same showing establishes that the California action constituted malicious prosecution and an abuse of the court process, causes of action alleged in the counterclaim. Mrs. Hubbard, who was forced to take on the burden of having the California action dismissed, affirmatively alleges these malicious prosecution and abuse of process causes of action as counterclaims.

In defending against the Plaintiff's complaint, Mrs. Hubbard also will establish that the allegations of wrongdoing are false. This same showing is highly relevant to the other two counterclaims asserted by Mrs. Hubbard: one alleging that Mr. Flynn's publication of the complaint to the

press constituted libel; and the other alleging that the lawsuit, being based on a sham pleading brought to obtain a default judgment, is an abuse of process. For both of these counterclaims, the truth or falsity of the allegations in the Plaintiff's complaint in the underlying action must be litigated.

Since the counterclaims are factually related to the movant's intended defense to the original complaint, there are judicial economies that outweigh any delay caused by litigating the counterclaims. This principle was followed in Stewart-Warner Corp. v. Westinghouse Elec. Corp., 325 F.2d 822 (2nd Cir. 1963), cert. denied, 376 U.S. 944 (1964), where a subsidiary of the defendant corporation was permitted to intervene in a patent infringement case and to assert unfair competition claims against the plaintiff. The Court found that even though the affirmative defenses and counterclaims asserted by the intervenor enlarged the field of litigation, there were substantial judicial economies in having a single judge resolve all the disputes which inevitably will require resolution. 325 F.2d at 826-27. See also Switzer Bros., Inc. v. Locklin, 207 F.2d 483 (7th Cir. 1953).

The Stewart-Warner case involved a much greater enlargement of the field of litigation than would result from the counterclaims asserted by Mrs. Hubbard. The unfair competition claims in Stewart-Warner were related to the patent infringement claims only because the same patented devices were involved in both causes of action. Here, in contrast, the very facts which must be shown to establish the counterclaims - the

truth of the allegations in the underlying complaint, the Plaintiff's motivation in making his allegations in the underlying complaint, and whether the Plaintiff had previously filed an abusive and malicious pleading in the California probate action - are facts that also are relevant to and will be litigated in Mrs. Hubbard's defense to the Plaintiff's complaint. Hence, the potential for delay in the instant case is much less than that in Stewart-Warner, and the judicial economies are even greater.

CONCLUSION

For the reasons stated above, it is respectfully submitted that movant Mary Sue Hubbard should be allowed to intervene to defend against the allegations in this lawsuit and to assert her counterclaims against Plaintiff Michael Flynn.

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